

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (CGM)

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff Investment
Securities LLC, and Bernard L. Madoff,

Plaintiff,

v.

BANCO ITAÚ EUROPA LUXEMBOURG
S.A., and BANCO ITAÚ EUROPA
INTERNATIONAL,

Defendants.

Adv. Pro. No. 12-01019 (CGM)

STIPULATION AND ORDER

Irving H. Picard (the “Trustee”), as trustee for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa–III, and the estate of Bernard L. Madoff, individually, and defendants Banco Itaú Europa Luxembourg S.A. and Banco Itaú Europa International

(“Defendants”), by and through their respective, undersigned counsel, hereby stipulate and agree as follows:

WHEREAS, on January 12, 2012, the Trustee filed his original complaint (“Complaint”) in the above-captioned adversary proceeding against Defendants. ECF. No. 1;

WHEREAS, on November 22, 2016, the Bankruptcy Court issued a Memorandum Decision Regarding Claims to Recover Foreign Subsequent Transfers (the “Bankruptcy Court ET Decision”) dismissing certain claims to recover subsequent transfers received from Fairfield Sentry Limited, Fairfield Sigma Limited, and Kingate Global Fund, Ltd. (among other initial transferees) on grounds of international comity, including the claims against Defendants. *See Picard v. Bureau of Labor Ins. (SIPC v. BLMIS)*, Adv. Pro. No. 08-01789 (SMB), 2016 WL 6900689 (Bankr. S.D.N.Y. Nov. 22, 2016);

WHEREAS, on February 25, 2019, the Court of Appeals for the Second Circuit issued an order, *In re Picard*, 917 F.3d 85 (2d Cir. 2019) (the “ET and Comity Decision”) which, *inter alia*, vacated the Bankruptcy Court ET Decision;

WHEREAS, on August 6, 2019, the Court entered an Order Pursuant to Section 105(a) of the Bankruptcy Code and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure approving a settlement agreement (“Settlement Agreement”) by and among the Trustee and Kingate Euro and Kingate Global (the “Kingate Funds”). *Picard v. Ceretti*, Adv. Pro. No. 09-01161 (CGM) (Bankr. S.D.N.Y. Aug. 6, 2019), ECF No. 417. The Settlement Agreement was a full and final settlement and satisfaction of the Trustee’s claims against the Kingate Funds. *Picard v. Ceretti*, Adv. Pro. No. 09-01161 (CGM) (Bankr. S.D.N.Y. July 17, 2019), ECF No. 413-2. The release granted by the Trustee in the Settlement Agreement extended to the Kingate Funds’ shareholders to the extent that any such shareholders, like Defendants, received transfers

of money from the Kingate Funds but did not include a release of claims that the Trustee may bring that are unrelated to the Kingate Funds' investments in or withdrawals from BLMIS. *Id.*;

WHEREAS, on June 1, 2020, the Supreme Court denied Defendants' Petition for a Writ of Certiorari concerning the Second Circuit's ET and Comity Decision. *See Order, HSBC Holdings PLC v. Picard*, 140 S. Ct. 2824, 2020 WL 2814770 (June 1, 2020); and

WHEREAS, on August 30, 2021, the Second Circuit held that, in a SIPA liquidation, the good faith defenses provided in 11 U.S.C. §§ 548(c) and 550(b) are governed by an inquiry notice standard and a SIPA trustee does not bear the burden of pleading a transferee's lack of good faith. *See In re BLMIS LLC*, 12 F.4th 171 (2d Cir. 2021) (the "Good Faith Decision");

WHEREAS, after the filing of the Complaint, the Trustee determined that two transfers from Fairfield Sentry to Banco Itau, totaling \$221,389 (2/14/2003) and \$164,786 (4/14/2003), should be dismissed ("Dismissed Fairfield Sentry Transfers").

IT IS HEREBY STIPULATED AND AGREED, that Defendants shall respond to the Complaint by March 14, 2022. The Trustee shall respond to the motion by May 13, 2022, and Defendants shall file their reply by June 13, 2022.

IT IS FURTHER HEREBY STIPULATED AND AGREED, that pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, as incorporated by Rule 7015 of the Federal Rules of Bankruptcy Procedure, the Trustee amends his Complaint to dismiss Count One, which sought to recover transfers that Banco Itaú Europa Luxembourg S.A. allegedly received from Kingate Global Fund Ltd.

IT IS FURTHER HEREBY STIPULATED AND AGREED, that pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, as incorporated by Rule 7015 of the Federal Rules of Bankruptcy Procedure, the Trustee amends his Complaint to dismiss the Dismissed Fairfield

Sentry Transfers. Except as set forth herein, this stipulation and order has no effect on the remaining allegations in Count Two of the Complaint.

Dated: January 20, 2022
New York, New York

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SO ORDERED.

**Dated: January 26, 2022
Poughkeepsie, New York**



/s/ Cecelia G. Morris

**Hon. Cecelia G. Morris
Chief U.S. Bankruptcy Judge**